THE NEED OF LIBERAL DIVORCE LAWS.

WITHIN the past few years a new interest has been awakened in questions relating to marriage and divorce, many of the ablest men in England, France, and America taking part in the discussion. In the prolonged debate on "the deceased wife's sister's bill," in the British Parliament, we have had the opinions of the leading men of England as to what constitutes marriage, and the best conditions to insure the happiness and stability of home life. In the French Chamber of Deputies, where a divorce bill* has been pending for years, the social relations have been as exhaustively discussed. And now, the proposition to secure a general law of divorce in the United States, by an amendment to the national constitution, must necessarily arouse a wide-spread agitation in this country.

When a distinguished Judge of the Supreme Court of New York, in an able article in one of our most liberal reviews, suggests important changes that should be made in our laws regulating the marriage relation, it is time for every good citizen to give a candid consideration to this subject. With many points made by Judge Noah Davis most thoughtful minds must agree, viz., the wisdom of having uniform laws in every State; more stringent laws against early marriages; the same moral code for men and women; that marriage should be regulated by the State, by the civil and not the canon law, wholly independent of church interference, unless the parties desire to solemnize the contract with its ceremonies. Thus far I agree with Judge Davis; but there are a few other equally vital points that I would suggest to him for reconsideration.

In common with the British Parliament, the Chamber of Deputies, and the general spirit of our laws, he regards marriage too much as a physical union, wholly in its material bearings,

* Introduced by M. Naquet.

and from the man's stand-point. He says: "Restrictions ought to be imposed on the marriage of infants. The common-law rule of twelve years for females and fourteen for males is not a fit or decent one for this country. The age should be at least fifteen and eighteen years." On what principle, I would ask, should the party on whom all the inevitable hardships of marriage must fall, be the younger to enter the relation? Girls do not get their full growth until twenty-five, and are wholly unfit at fifteen for the trials of maternity. Both mother and child are enfeebled in such premature relations, and the girl robbed of all freedom and sentiment just as she awakes to the sweetest dreams of life. Few fathers or mothers would consent to the marriage of a daughter of fifteen, and the state, by wise laws, should reflect the common sense of the people. What knowledge can a girl of fifteen have of the great problems of social life, of the character of a husband, of the friendship and love of which the true marriage should be an outgrowth?

The state not only views marriage as a physical union and a civil contract, but seemingly as of inferior importance to all other contracts. A legal contract for a section of land requires that the parties be of age and of sound mind; that there be no flaw in the title, no liens or mortgages thereon not specified; and that the agreement be in writing, with the names of parties and witnesses duly affixed, stamped with the seal of the state, and recorded in the office of the county clerk. But a legal marriage, in most of the states, may be contracted between a boy of fourteen and a girl of twelve, without the consent of parents or guardians, without publication of banns, without witnesses, without even the signatures of the parties, the presence of a priest, or of any officer of the state.

Though we are taught to regard France, of all European nations, most lax in social morals, yet her legislation on marriage is far more stringent than ours. By French law the husband must be eighteen, the wife fifteen. The consent of the parents or guardians of both parties is required, and, in case of their refusal, the contract cannot be made until the man is twenty-five, and the woman twenty-one. The marriage must be preceded by the publication of the banns, and the ceremony performed by a public official, at his office, in the presence of four witnesses. It is, moreover, recorded in two special registers, one of which is deposited in the archives of the state. Yet, while this contract

may be formed so ignorantly, thoughtlessly, and irreverently in the United States, the whole power of law, religion, and public sentiment are now about to be summoned to enforce its continuance, without regard to the happiness or misery of the parties.

Judge Davis speaks of divorce as the foe of marriage. He makes this mistake throughout his article. Divorce is not the foe of marriage. Adultery, intemperance, licentiousness are its foes. One might as well speak of medicine as the foe of health. Again, in surbordinating the individual to the state, the premises of Judge Davis are unsound. He says, "the interests of society are first and paramount, those of individuals secondary and subordinate." We have so often heard the declaration that the individual must be sacrificed to society that we have come to think their interests lie in different directions; whereas, the reverse of this proposition is true. Whatever promotes the best interests of the individual promotes the best interests of society, and *vice versa.* The normal condition of adult men and women is one of individual independence, of freedom, and of equality; their first duty, the full development of their own faculties and powers, with a natural right to life, liberty, and happiness, and of resistance to all artificial contrivances that endanger life, curtail liberty, or destroy happiness. The best interests of the individual are the primal consideration; individual happiness, the only true basis of a happy home, a united church, a peaceful state, a well organized society. "We must first have units," says Emerson, "before we can have unions." We must have harmoniously developed men and women before we can have happy marriages. The central idea of barbarism has ever been the family, the tribe, the nation, never the individual. The Roman idea, the pagan idea, was, that the individual was made for the state. The Christian idea is the sacredness of the individual, superior to all human institutions. It was this central truth, taught by the great founder of our religion, that gave Christianity such a hold on the people, slowly molding popular thought to the higher idea, culminating at last in the Protestant Reformation and a Republican Government, alike based on individual rights, on individual conscience and judgment.

In regard to Judge Davis's proposition for an amendment to the national constitution, to make the laws homogeneous

from Maine to Texas, the question naturally suggests itself, On what basis should this general law be enacted? On the progressively freer divorce laws that the true American sovereign of the West will surely demand, or on more restrictive legislation? It is evident that Judge Davis inclines to the latter; but in selecting South Carolina as his standard of "peace, purity, and felicity" in family life, because no divorce laws have existed there, he is most unfortunate alike in his philosophy and his statistics. From 1872 to 1878, divorces were obtainable for adultery in South Carolina, but none were granted. In 1878 the law was repealed. Judge Davis indicates, in a very indefinite manner, the result of having no divorce law in South Carolina; he says: "I am greatly misinformed if in that State the peace, purity, and felicity of families do not maintain a far higher standard than in States where divorces are the chronic mischief and misery of domestic life." I will prove by judicial evidence the disastrous effect that the want of a divorce law has had on the family life of South Carolina, the only State in the Union in which a divorce has never been granted. "The Legislature has found it necessary to regulate, by statute, how large a proportion of his property a married man may give to his concubine." *

This fact proves that where divorces are not permitted, meretricious connections will be formed. The above-mentioned law would not have been passed unless there had been subject-matter for it to operate upon. But listen to the words of wisdom from the judicial bench of South Carolina:

"In this country, where divorces are not allowed for any cause whatever, we sometimes see men of excellent character unfortunate in their marriages, and virtuous women abandoned or driven away houseless by their husbands, who would be doomed to celibacy and solitude if they did not form connections which the law does not allow, and who make excellent husbands and virtuous wives still. Yet they are considered as living in adultery, because a rigorous and unyielding law, from motives of policy alone, has ordained it so." (Nott, *J.*, in Cusack *vs.* White, 2 Mill, 279, 292.)

This is the system that a Judge of the Supreme Court upholds and praises, and is sustained by the Supreme Court of Georgia, which says: "In South Carolina, to her unfading honor, a divorce has not been granted since the Revolution." I

* See Denton *vs.* English, 3 Brev., p. 147; also Canady *v.* George, 6 Rich. Eq., p. 103.

would refer the learned judges of New York and Georgia to the case in South Carolina of Jelineau *vs.* Jelineau, 2 Des., p. 45, where a man took his negro slave woman to his bed and board, and with brutal punishment compelled the unoffending wife to eat with his colored concubine. To her "unfading honor," the powers of the State of South Carolina compelled this family to live on in "peace, purity, and felicity." One of the ablest writers on this subject, Joel P. Bishop, says:

"That the judges should themselves praise the legislation of their own State is no more than we ought to expect; since all men esteem what is their own more highly than what is another's. Thus it is remarked by O'Neal, *J.*: 'The most distressing cases, justifying divorce even upon Scriptural grounds, have been again and again presented to the Legislature, and they have uniformly refused to annul the marriage tie.' They have nobly adhered to the injunction, 'Those whom God has joined together, let not man put asunder.' The working of this stern policy of 'nobly' refusing redress even in the 'most distressing cases,' where Scripture joined with reason in crying for redress, has been to the good of the people and the State in every respect.' And another of her judges exclaims: 'The policy of this State has ever been against divorces. It is one of her boasts that no divorce has ever been granted in South Carolina.' Could South Carolina truly declare that no husband within her borders had ever proved unfaithful to the marriage vow, and no wife had been false to her husband; that the observation judicially made by one of her judges concerning marriages in this State is in no part true, namely, 'all marriages almost are entered into on one of two considerations, love or interest, and the Court is induced to believe the latter is the foundation of most of them' (Thompson, *J.*, in Devall *vs.* Devall, 4 Des., 79); that no judge of hers had from the judicial bench proclaimed it a virtue to commit the legal felony of polygamy, and to live in adultery; that no class of men existed in the State calling for legislation to regulate their connections with their concubines,—then, indeed, might the people of the other States talk of 'unfading honor,' which had settled as a halo, or as a crown of glory about her brow!"

Another view of the domestic virtue and felicity of South Carolina law can be had by reference to the United States Census of 1880, which shows the number of mulattoes, or the mixed races, in that State. Where concubinage is recognized, there is no pressing need for liberal divorce laws.

Judge Davis says: "In the colonial history of the State of New York, for more than a century, divorces were unknown." The Patroon Courts granted divorces in 1630, and other divorces were granted in 1655. In Massachusetts divorces were granted before 1674. In Connecticut, before 1655. I am informed that the declaration by Judge Davis, that a legal divorce can be obtained

in New York in twelve hours, is incorrect. In case of a default, the plaintiff cannot get judgment in less than twenty days. If the defendant answers, the motion for judgment must be made at the regular Special Term, in accordance with the accurate interpretation of rule 77 by Judge A. R. Lawrence. In this latter case, the plaintiff cannot get judgment in less than one month. It usually takes at least two months to get judgment in the simplest divorce case. But if it be true in the case specified by Judge Davis, where the crime is adultery and the parties are agreed, that a legal divorce and marriage can occur within twelve hours, the question is, Who is responsible for such laws? and can we safely trust legislators who have placed the marriage institution on such uncertain foundations to draw up a constitutional amendment giving general laws to all the States? Again, Judge Davis's inferences from his facts are not logical. He says the percentage of divorces is largest in States furnishing the readiest facilities for dissolving the union. True, but it is not because the inhabitants of that State are made fickle and faithless by the laws, as he suggests, but because large numbers of persons come from States having rigid divorce laws into those furnishing the readiest facilities for their purpose. The number of divorces granted in a given State is no indication of the general discontent of its own citizens.

Judge Davis is equally unfortunate in his facts of ecclesiastical history. He calls monogamy "an Hebraic Christianized idea." The Hebraic part of that idea was pure polygamy; the Christianized part was the unchanged polygamy of the early Christian church, except where and until it came in contact with the monogamic Greek and Roman civilizations—omitting the Germanic and Norse monogamy from the account, only because Christianity reached them after its modification by Roman civilization. Neither Christ nor his disciples ever attempted to change polygamous into monogamic marriage, any more than they attempted to change absolute political despotism into constitutional or republican government, or to abolish slavery where they found it.

The Catholic Church early seized the control of marriage, as she did of every institution that would give her a hold on mankind, and administered its ordinances in the most tyrannical form as regards the masses, her instinct ever being restrictive; though she always claimed for herself the right of divorce, and

exercised it for what she deemed sufficient cause. One of the prominent features of the Reformation was the demand of its great leaders for free divorce, in the interests of morality, in view of the licentiousness of Catholic Europe. And to-day the only hope for the purification of manners and morals is in free divorce; in elevating the ideal of marriage so that it shall consist of the spiritual as well as the physical element. Where unfitness exists, it would be for the interest of society for the state to step in (supposing authority in the matter an admitted fact), and insist on annulling the contract, instead of impeding a separation. The popular objections to divorce are unsound and contradictory.

First. It is said, to make divorce respectable is to break up all family relations,—which is to say that human affections are the result of church canons and statute laws. The love of men and women for each other and for their children existed long before human governments were established, and will survive when all these artificial arrangements shall have passed away. Did the happy wives in this State ever suppose that the regret they felt in leaving home, husband, and children, and the joy in returning, were due to the stringent divorce laws of New York; and that without these they would have been wanderers on the face of the earth? To open the door of escape to those who live in contention, would not necessarily embitter the relations of those who are happy. On the contrary, freedom in all relations strengthens the bond of union. When husbands and wives do not own each other as property, marriage will be a life-long courtship, not a weary yoke, from which both may sometimes long for deliverance. Many a tyrannical husband, knowing that public sentiment would protect his wife in leaving him, might become gracious and reasonable; and many a peevish wife, knowing that her husband could honorably sunder the tie, would soon change her manners.

Second. It is said that the fickle would separate for trifling causes, and that unprincipled men, from love of change, would take a new wife every Christmas, if they could legally rid themselves in season of the old one. As the centripetal forces in the material world are strong enough to hold matter to a common center against all outside attractions, so, in the moral world, the love of change is subordinate to the stronger love of the familiar objects and conditions about them. All ex-

perience proves the truth of the historical maxim, "Mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they have been accustomed." This objection is based on the idea that woman will always remain the helpless victim of every man she meets. But a new type of womanhood is developing under our free institutions, demanding higher conditions. Educated to self-support, with a profitable place in the world of work, with land under her feet and a shelter over her head, the political equal of the man by her side, she will not clutch at every offer of marriage, like a drowning man at the floating straw. Though men should remain just what they are, the entire revolution in woman's position, now begun, will force a new moral code in social life. But the virtue and independence of women must evolve a higher type of manhood, also.

Third. Some claim that the interests of children require an indissoluble tie. It is a great blessing to be well born, to be welcomed on the threshold of time, and to be reared in an atmosphere of peace and love. No amount of care and education can ever compensate a child for the morbid conditions of its organization, resulting from coldness, indifference, or disgust in the parents for one another. Next to the misfortune of such a birth, is the demoralizing influence on children trained in an atmosphere of discord and dissatisfaction, such as a false marriage relation inevitably creates. One of the strongest reasons for demanding the release of unhappy wives and husbands is the evil effects on the children.

Fourth. Men and women, it is said, would not exercise the deliberation they now do, if to marry ill were not considered a crime, and the parties doomed to suffer a life-long penalty. Nothing could be more reckless than what is done legally every day, under the present system—when to be seen merely walking together may be taken as evidence in court of intent to marry, and going through the ceremony in jest may seal the contract. The fear of transient conditions would make the parties far more careful in making their family arrangements. Women, acting on the faith of a life-long relation, a permanent home, are very apt to surrender all their earthly possessions into the hands of husbands who spend their substance and then abandon them to self-support. The theory of the indissoluble marriage never was and never can be practicable, except for the best

organized men and women, in happy relations, and they are a law to themselves. For others, legal divorces are far better than discord or erratic relations outside of law. Impulsive people, under the influence of strong passions, pay little attention, in any circumstances, to laws or future consequences; and very few know what the laws are, or the penalty for their violation.

Fifth. It is said that the Bible is against divorce. When those who are opposed to all reforms can find no other argument, their last resort is the Bible. It has been interpreted to favor intemperance, slavery, capital punishment, and the subjection of women; and now, in the face of the most pronounced declarations, and the example of "men after God's own heart" and his chosen people for centuries, we are told that it condemns divorce. The one form of marriage recognized in the Bible is polygamy, both in the Old Testament and the New. It was at a Jewish polygamous wedding that Jesus performed his first miracle, and polygamy was practiced by Christians for centuries. It would be rather a difficult task for one thoroughly versed in Scripture to prove the monogamic marriage and the indissoluble tie by any fair interpretation of Hebrew or Greek texts.

As the great majority of divorces are asked for by women, release and divorce are of vital importance to them. No words can describe the infinite outrages to which women are subject in compulsory relations for which the law gives no redress. The decisions of judges in many cases show that the subjection of woman is the very essence of the law of marriage; and how could it be otherwise when the contract and all the statutes governing it have been made by one of the parties, while the other has been profoundly ignorant of its provisions and specifications. How many women in this republic know anything of the spirit or letter of the civil or canon law on this whole question of marriage and divorce? Not until they feel its iron teeth in their own flesh do they awake to the helplessness of their position. Thus far this vital question has been discussed by man; he has spoken in Scripture, and he has spoken in law; from the beginning he has had the whole and sole regulation of the matter. In all history, sacred and profane, woman has never been recognized as an equal party to the contract. Will the remedy that Judge Davis proposes, a general law on the basis

of the code in South Carolina, bring new liberties to woman? No, no; in justice to the daughters of this republic there should be no such final settlement of this question as a constitutional amendment involves until woman has a direct voice in the legislation of the country. For the past half century, those who understand our system of jurisprudence have been constantly protesting against the spirit and letter of the common law of England on which our system is based, until many of the old statutes so degrading and oppressive to married women have been, one after another, swept away. Finding the marriage relation theoretically a condition of slavery, and practically so when tyrannical husbands chose to avail themselves of their legal rights, women early began to ask release from their yoke of bondage, and here and there humane legislators, roused with a sense of woman's wrongs, began to open the door of escape through liberal divorce laws. But at first it required great courage and self-respect for wives, however miserable, in the face of time-honored laws, religion, and public sentiment, to avail themselves of these new privileges. Now, with higher light and knowledge of the true marriage, and all the responsibilities that grow out of it, they begin to feel themselves more degraded by remaining with unworthy and unloved partners than by sundering the unholy ties that bind them in such unions. When we appreciate the fact that the vast majority of applications for divorce are made by women, that liberal divorce laws for oppressed wives are what Canada was for Southern slaves, it is clearly a work of supererogation for learned men to demand "more stringent laws for women's protection!"—protection, such as the eagle gives the lamb he carries to his eyrie! Alas, for the wrongs that woman has suffered under the specious plea of protection!

If the marriage institution is of divine origin, we may safely trust him who ordained it to see that "those whom he hath joined together will never be put asunder." It is not necessary to reënact the laws of God. Liberal divorce laws are intended to enable those only whom God has not joined together to be put asunder. Such laws, so far from being barbarous and degrading, indicate the growing independence, intelligence, and virtue of American womanhood. Our decreasing families, so far from being an evidence of the dying out of maternal love, indicate a higher perception of the dignity and responsibility of

motherhood. With woman's keen sense of moral principles, she begins to appreciate the awful waste of human force as she contemplates the panorama of our social life: the unhappy inmates of our jails and prisons, of our asylums for the insane, the deaf, the dumb, the blind, the orphan and pauper, the innumerable standing army of drunkards, the multitudes of children whom nobody owns, and for whom nobody cares—cold, hungry, their feet in slippery places, sleeping at night in all our cities, like rats, in any hole they can find. In view of these appalling facts, the mothers of the race may well pause and put the question to themselves, Is it for such as these we give the heyday of our lives? For such as these we ever and anon go down to the very gates of death? Is this a life-work worthy our highest ambition, a religious duty for our best powers? The answering echo from every mountain-top is, No! Above the thunders of Sinai, a warning voice, loud and clear, rings through the centuries: "The sins of the fathers shall be visited upon the children, to the third and fourth generations."

Before claiming that marriage is a divine institution, before binding women by further restrictive legislation, let the high-priests at the family altars purify themselves, body and soul, and make themselves fit to be the creators of immortal beings. Science has vindicated the right to discuss freely whether our ancestors were apes; let it be as free to ask whether our posterity shall be idiots, knaves, and lunatics; and if not, by what changes such wretched results may be avoided. Judge Davis's picture of the general upheaval in our social life, under liberal divorce laws, is, indeed, a sad presentation of the possible future; but a change in the civil code will not destroy all natural affections. Is family life with the mass of mankind so satisfactory that it calls for no improvement? Change is not death, neither is progress destruction. We have shifted governments from despotisms, empires and monarchies, to republics, without giving up the idea of national life; and we Americans believe that greater peace and prosperity are enjoyed in a republic than under any other form of government. True, these changes from the lower to the higher have involved hot debates, violence, and war; but the free institutions we enjoy more than compensate for the struggles we have endured. We have changed the foundations of the church, too, without destroying the religious sentiment in the human soul. The dissensions in the church have filled the world

with despair for ages and deluged nations in blood; but the right of individual conscience and judgment, against all authority, is the result. Though the cardinal points of our faith have been changed again and again, yet we have a church still. So we shall have the family, that great conservator of national strength and morals, after the present restrictive divorce laws are all swept from the statute-books. To establish a republican form of government in the family must of necessity involve discussion and division; but more satisfactory relations will be the result of the transition evils that we now see and deplore. The same law of equality that has revolutionized the state and the church is now reorganizing the home. The same process of evolution that has given us a state without a king and a church without a Pope, will give us a family without "a divinely ordained head," in which the interests of father, mother, and child will be equally represented.

ELIZABETH CADY STANTON.